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HOUSE BILL 739

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO WATER; ESTABLISHING WATER COURT DIVISIONS WITHIN
FOUR JUDICIAL DISTRICTS TO DETERMINE WATER RIGHTS CASES; MAKING
AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] WATER COURTS ESTABLISHED--
VENUE. --

A. A water court is established as a separate
division in each of the first, third, fifth and eleventh
judicial districts to adjudicate water rights disputes. The
district courts of each of these judicial districts shall
designate one district judge to sit as water judge.

B. The supreme court shall adopt rules of procedure
for the water courts.

C. If a court in any judicial district determines

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1 that venue and jurisdiction for a matter is properly within the
2 water court of the first, third, fifth or eleventh judicial
3 district, the original court shall transfer the matter to the
4 water court division in the appropriate district. Upon
5 transfer, the water court division obtains jurisdiction over
6 the matter for proceedings in water rights.

7 Section 2. [NEW MATERIAL] WATER JUDGES-- JURISDICTION--
8 DUTIES. --

9 A. A water judge shall have jurisdiction
10 coextensive with the boundaries of a stream system as provided
11 in Section 38-3-1 NMSA 1978.

12 B. Subject to approval of the supreme court, water
13 judges shall adopt comprehensive orders to expedite the hearing
14 and disposition of water rights claims in the stream systems.
15 The orders may include provisions for mediation, the adoption
16 of water rights claim forms, the filing of answers, discovery,
17 notice of service and service of process.

18 C. Service as a water judge shall be in addition to
19 the regular duties of a district judge, but shall take priority
20 over the regular duties, and the schedule of the judges in the
21 district shall be arranged and adjusted so that the water judge
22 is free to hear water matters as necessary.

23 Section 3. [NEW MATERIAL] SPECIAL WATER MASTERS--
24 APPOINTMENT-- DUTIES-- ADDITIONAL STAFF-- DISTRICT COURT
25 SUPPORT. --

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1 A. The water judge for each stream system may
2 appoint one special water master to expedite the disposition of
3 water rights claims arising in the adjudication of the stream
4 system. Special water masters shall be licensed to practice
5 law in New Mexico and shall be experienced in New Mexico water
6 law and trial procedure.

7 B. The special water master shall conduct hearings
8 promptly on all matters referred to him in the order referred.
9 The special water master shall file a report with the clerk of
10 the district court in the judicial district in which the matter
11 was filed within sixty days following completion of each matter
12 in the order of reference. The report shall contain
13 recommended findings of fact and conclusions of law based upon
14 the evidence presented before the special water master.

15 C. The water judge for a stream system may employ
16 tape monitors as necessary to make and preserve a record in
17 matters heard by the water judge or special water master.

18 D. During general stream adjudications, the
19 district court shall provide for a case management clerk and
20 law clerk to assist the water judge.

21 E. Subject to availability of space, the district
22 courts in each of the state's judicial districts shall provide
23 courtrooms and other necessary facilities for the water judges
24 and special water masters hearing cases in the judicial
25 district.

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1 Section 4. Section 34-6-4 NMSA 1978 (being Laws 1968,
2 Chapter 69, Section 7, as amended) is amended to read:

3 "34-6-4. JUDGES--FIRST JUDICIAL DISTRICT.--There shall be
4 [~~seven~~] eight district judges in the first judicial district. "

5 Section 5. Section 34-6-6 NMSA 1978 (being Laws 1968,
6 Chapter 69, Section 9, as amended) is amended to read:

7 "34-6-6. JUDGES--THIRD JUDICIAL DISTRICT.--There shall be
8 [~~six~~] seven district judges in the third judicial district. "

9 Section 6. Section 34-6-8 NMSA 1978 (being Laws 1968,
10 Chapter 69, Section 11, as amended by Laws 1994, Chapter 65,
11 Section 1 and also by Laws 1994, Chapter 77, Section 1) is
12 amended to read:

13 "34-6-8. JUDGES--FIFTH JUDICIAL DISTRICT.--There shall be
14 [~~eight~~] nine district judges in the fifth judicial district. "

15 Section 7. Section 34-6-14 NMSA 1978 (being Laws 1968,
16 Chapter 69, Section 17, as amended by Laws 1995, Chapter 178,
17 Section 3 and also by Laws 1995, Chapter 179, Section 1) is
18 amended to read:

19 "34-6-14. JUDGES--ELEVENTH JUDICIAL DISTRICT.--There
20 shall be [~~six~~] seven district judges in the eleventh judicial
21 district. The judges of divisions one, three, four, [~~and~~] six
22 and seven shall reside and maintain their principal offices in
23 San Juan county. The judges of divisions two and five shall
24 reside and maintain their principal offices in McKinley
25 county. "

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1 Section 8. Section 38-3-1 NMSA 1978 (being Laws 1875-
2 1876, Chapter 2, Section 1, as amended) is amended to read:

3 "38-3-1. COUNTY IN WHICH CIVIL ACTION IN DISTRICT COURT
4 MAY BE COMMENCED. --All civil actions commenced in the district
5 courts shall be brought and shall be commenced in counties as
6 follows and not otherwise.

7 A. First, except as provided in Subsection F of
8 this section relating to foreign corporations, all transitory
9 actions shall be brought in the county where either the
10 plaintiff or defendant, or any one of them in case there is
11 more than one of either, resides; or second, in the county
12 where the contract sued on was made or is to be performed or
13 where the cause of action originated or indebtedness sued on
14 was incurred; or third, in any county in which the defendant or
15 either of them may be found in the judicial district where the
16 defendant resides.

17 B. When the defendant has rendered himself liable
18 to a civil action by any criminal act, suit may be instituted
19 against the defendant in the county in which the offense was
20 committed or in which the defendant may be found or in the
21 county where the plaintiff resides.

22 C. When suit is brought for the recovery of
23 personal property other than money, it may be brought as
24 provided in this section or in the county where the property
25 may be found.

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1 D. [~~(1)~~] When lands or any interest in lands [~~are~~]
2 is the object of any suit in whole or in part, the suit shall
3 be brought in the county where the land or any portion of the
4 land is situate [~~(2)~~]; provided that [~~where~~] if such lands are
5 located in more than one county and are contiguous, [~~that~~] the
6 suit may be brought as to all of the lands in any county in
7 which a portion of the lands is situate, with the same force
8 and effect as though the suit had been prosecuted in each
9 county in which any of the lands are situate. In all such
10 cases in which suit is prosecuted in one county as to
11 contiguous lands in more than one county, notice of lis pendens
12 shall be filed pursuant to Sections 38-1-14 and 38-1-15 NMSA
13 1978 in each county. For purposes of service of process
14 pursuant to Rule [4] 1-004 of the *Rules of Civil Procedure for*
15 *the District Courts*, any such suit involving contiguous lands
16 located in more than one county shall be deemed pending in each
17 county in which any portion of the land is located from the
18 date of filing of the lis pendens notice.

19 E. Suits for trespass on land shall be brought as
20 provided in Subsection A of this section or in the county where
21 the land or any portion of the land is situate.

22 F. Suits may be brought against transient persons
23 or nonresidents in any county of this state, except that suits
24 against foreign corporations admitted to do business and
25 [~~which~~] that designate and maintain a statutory agent in this

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1 state upon whom service of process may be had shall only be
2 brought in the county where the plaintiff, or any one of them
3 in case there is more than one, resides or in the county where
4 the contract sued on was made or is to be performed or where
5 the cause of action originated or indebtedness sued on was
6 incurred or in the county where the statutory agent designated
7 by the foreign corporation resides.

8 G. Suits against any state officers as such shall
9 be brought in the court of the county in which their offices
10 are located, at the capital or in the county where a plaintiff,
11 or any one of them in case there is more than one, resides,
12 except that suits against the officers or employees of a state
13 educational institution as defined in Article 12, Section 11 of
14 the constitution of New Mexico, as such, shall be brought in
15 the district court of the county in which the principal office
16 of the state educational institution is located or the district
17 court of the county where the plaintiff resides.

18 H. Effective July 1, 2003, if a water right in the
19 Rio Grande, Pecos or San Juan stream system is an object of a
20 suit, in whole or in part, the suit shall be brought in the
21 water court division in the:

22 (1) first judicial district if the stream
23 system is part of the upper or middle Rio Grande stream system
24 or declared basins within the upper or middle Rio Grande
25 watershed;

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1 (2) third judicial district if the stream
2 system is part of the lower Rio Grande stream system or
3 declared basins within the lower Rio Grande watershed;

4 (3) fifth judicial district if the stream
5 system is part of the Pecos stream system or declared basins
6 within the Pecos watershed; or

7 (4) eleventh judicial district if the stream
8 system is part of the San Juan stream system or declared basins
9 within the San Juan watershed. "

10 Section 9. Section 72-7-1 NMSA 1978 (being Laws 1907,
11 Chapter 49, Section 63, as amended) is amended to read:

12 "72-7-1. APPEAL TO DISTRICT COURT--PROCEDURE. --

13 A. ~~[Any]~~ An applicant or other party dissatisfied
14 with ~~[any]~~ a decision, act or refusal to act of the state
15 engineer may appeal to the district court of the county in
16 which the work or point of desired appropriation is situated,
17 unless otherwise provided in Section 38-3-1 NMSA 1978.

18 B. Appeals to the district court shall be taken by
19 serving a notice of appeal upon the state engineer and all
20 parties interested within thirty days after receipt by
21 certified mail of notice of the decision, act or refusal to
22 act. If an appeal is not timely taken, the action of the state
23 engineer is conclusive.

24 C. The notice of appeal may be served in the same
25 manner as a summons in civil actions brought before the

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1 district court or by publication [~~is~~] in some newspaper printed
2 in the county or water district in which the work or point of
3 desired appropriation is situated, once a week for four
4 consecutive weeks. The last publication shall be at least
5 twenty days prior to the date the appeal may be heard. Proof
6 of service of the notice of appeal shall be made in the same
7 manner as in actions brought in the district court and shall be
8 filed in the district court within thirty days after service is
9 complete. At the time of filing the proof of service and upon
10 payment by the appellant of the civil docket fee, the clerk of
11 the district court shall docket the appeal.

12 D. Costs shall be taxed in the same manner as in
13 cases brought in the district court, and bond for costs may be
14 required upon proper application.

15 E. The proceeding upon appeal shall be de novo as
16 cases originally docketed in the district court. Evidence
17 taken in a hearing before the state engineer may be considered
18 as original evidence subject to legal objection, the same as if
19 the evidence was originally offered in the district court. The
20 court shall allow all amendments which may be necessary in
21 furtherance of justice and may submit any question of fact
22 arising therein to a jury or to one or more referees at its
23 discretion. "

24 Section 10. APPROPRIATION. --

25 A. Two million four hundred thousand dollars

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1 (\$2,400,000) is appropriated from the general fund in the
2 following amounts to the following judicial districts for
3 expenditure in fiscal year 2004 for the purpose of establishing
4 water court divisions and the necessary staff and facilities
5 for those divisions:

6 (1) six hundred thousand dollars (\$600,000) to
7 the first judicial district court;

8 (2) six hundred thousand dollars (\$600,000) to
9 the third judicial district court;

10 (3) six hundred thousand dollars (\$600,000) to
11 the fifth judicial district court; and

12 (4) six hundred thousand dollars (\$600,000) to
13 the eleventh judicial district court.

14 B. Any unexpended or unencumbered balance remaining
15 at the end of fiscal year 2004 shall revert to the general
16 fund.